

**FILED**

**JUL 15 2010**

**A. C. J. C.**

SUPREME COURT OF NEW JERSEY  
ADVISORY COMMITTEE ON  
JUDICIAL CONDUCT

DOCKET NO: ACJC 2009-003

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IN THE MATTER OF

STEVEN P. PERSKIE  
JUDGE OF THE SUPERIOR COURT

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**STIPULATIONS**

The undersigned Disciplinary Counsel ("Presenter") to the Advisory Committee on Judicial Conduct and the Honorable Steven P. Perskie, J.S.C. (Ret.) ("Respondent"), through counsel, hereby enter into these Stipulations:

1. Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1969.

2. At all times relevant to this matter, Respondent served as a judge in the Superior Court of New Jersey, assigned both to the Civil Division and the Chancery Division in the Atlantic-Cape May Vicinage, a position he no longer holds.

3. Respondent retired from his judicial office with the New Jersey Superior Court effective February 1, 2010.

4. Beginning in February 2005 and extending through early October 2006, Respondent presided over the matter of Bruce Kaye, et al. v. Alan P. Rosefielde, et al., Docket No. ATL-C-000017-05, in the Superior Court of New Jersey, Chancery Division, Atlantic County (the "Rosefielde Matter").

5. The Rosefielde Matter, which was initiated with the filing of a complaint in February 2005, concerned issues relating to Defendant Alan Rosefielde's ("Rosefielde")

termination from employment with a company or group of companies in which Plaintiff Bruce Kaye ("Kaye") was a principal.

6. One of the issues in the Rosefielde Matter concerned the termination and subsequent re-issuance of insurance for the corporate plaintiffs with Frank Siracusa ("Siracusa"), a local insurance broker in Atlantic City.

7. Neither party asserted a claim against Siracusa. Both parties identified Siracusa as a potential witness.

8. On October 12, 2005, Respondent presided over a motion hearing in the Rosefielde Matter at which Siracusa's name was specifically referenced in connection with a discovery dispute between the parties. During this motion hearing, the following occurred:

- a. Respondent notified the parties, on the record, that he knew Siracusa.
- b. Respondent disclosed, on the record, that he had obtained his personal insurance through Siracusa's brokerage office many years earlier, and that he continues to have a business relationship with Siracusa's office up to the present day.
- c. Respondent disclosed, on the record, that, "many years ago," he and Siracusa were associated in some of Respondent's "endeavors in public office."
- d. Respondent further stated, on the record, that although he did not know what Siracusa's role, if any, was in the Rosefielde Matter, he did not perceive that his "historic relationship" with Siracusa would pose a problem for him as the judge in the Rosefielde Matter. However, Respondent indicated that the parties would need to make their own determinations on that issue.
- e. Respondent further stated: "Nor do I have any idea other than by this conversation of the last two minutes about what ... Mr. Siracusa has to do with the issues in this case, and I don't need to know the answer to that at this point."

9. Respondent did not disclose to the parties during the motion hearing in October 2005 the following information with regard to Respondent's past involvement with Siracusa:

- a. Siracusa had made monetary contributions to Respondent's campaigns for a seat in the New Jersey Assembly in 1975 and the New Jersey Senate in 1977.
- b. Respondent had appointed Siracusa as the Treasurer of his Senate campaign in May 1977.
- c. Respondent and Siracusa, along with several other individuals, worked together in connection with the effort to bring legalized gambling to New Jersey in the 1970s.

10. On February 7, 2006, Respondent signed an Order directing that several depositions occur on dates certain, including the deposition of Siracusa.

11. On May 26, 2006, Respondent again presided over a motion hearing and management conference in the Rosefielde Matter. At this motion hearing and management conference, the following occurred:

- a. Rosefielde's counsel raised the issue that Respondent, as the trier of fact, might have to make credibility determinations with respect to Siracusa, and that in light of Respondent's previously disclosed business relationship with Siracusa, Respondent might "perhaps" want to direct that the claims for which Siracusa's credibility would be in issue be tried to a jury. Rosefielde's counsel described the issue as "a miscellaneous issue that may at some point in the future affect the court's thinking" about the length of the trial.
- b. Rosefielde's counsel agreed with Respondent that the issue of a jury trial with respect to those claims that related to Siracusa was not "something [he] need[ed] to decide" then and that the issue could remain open pending further discussion. He further said that Respondent "may want us to give you some more detail – today's probably not the time to do it – about the nature of the transaction and the concerns before you."
- c. Respondent disclosed, for the first time, that in addition to getting his insurance through Siracusa's office and interacting with Siracusa during his bids for elective office, Respondent and Siracusa, along with many other individuals, shared an interest in a restaurant approximately 30 years earlier.
- d. Respondent further opined that:

There is nothing from any of that that from my point of view requires me to recuse on my own motion. But I'm sure I indicated then, and I'll indicate now, if any party has any concerns or questions about it, I'll deal with it.

I don't perceive that there's anything about the nature or extent of my historic relationship with him that would preclude me from making the kind of credibility evaluation of his testimony that I would make of somebody I didn't know.

But I concede that the parties have to be as comfortable about that conclusion as I am. So if anybody has any questions at any point or has concerns about it, I'll be happy to deal with them.

....

And we'll leave the issue open. All I'm saying is that my relationship with him is not such, as it would be, for example, with some other people that I can mention, that I simply would not feel comfortable evaluating their credibility.

12. On September 8, 2006, Respondent again presided over a motion hearing and management conference in the Rosefielde Matter. At this motion hearing and management conference, the following occurred:

- a. Rosefielde's counsel again raised with Respondent the issue of Respondent's prior and existing business relationship with Siracusa, whom he described at that time as a "pretty important witness."
- b. At the time of this hearing, a Motion to Dismiss was pending before Respondent, returnable on October 6, 2006, which sought the dismissal of one of the claims that implicated Siracusa's credibility.
- c. In response to Rosefielde's counsel, Respondent stated the following:

At the appropriate time, and today isn't it, what somebody's going to need to do is essentially summarize whose witness he would be and what the substance of ... the testimony that he's presenting ... If this is a jury trial and ... if I can't get out of it, the fact that I had and have a relationship with him, wouldn't trouble me in the least. If it's a non-jury trial, and I'm trying it, and his credibility is a factor I would need to determine, that's something I need to think about in whatever the context in which it's presented is.

- d. Respondent described Siracusa as having been a "very close associate" and "friend" of his in the 1970s and early 1980s when Respondent was involved in politics.
- e. Respondent further indicated that since the early 1980s, "my only real association with him is that I buy insurance through his office and I see him at lunch a couple of times a month."
- f. Following Respondent's remarks, Rosefielde's counsel advised Respondent that he would like to "tee this issue up in the form of a motion." Respondent agreed that counsel should "tee the issue up in whatever form you think is appropriate."
- g. In discussing Rosefielde's decision to file a motion for Respondent's recusal, Respondent indicated that he did not have enough information at that point to recuse himself on his own motion and further stated: "I don't know whether I would need to recuse or not. It's possible, and it's also possible I would not."
- h. Rosefielde's counsel said he was not suggesting that Respondent recuse himself on his own motion and added "That's why I want to get the whole context before Your Honor so you can make that decision."

13. On October 6, 2006, Respondent presided over, *inter alia*, the motion hearing relating to Rosefielde's Motion for Recusal in the Rosefielde Matter. At this motion hearing, the following occurred:

- a. Respondent denied the Motion for Recusal.
- b. Respondent stated, on the record, that: "Even if [Siracusa] were to be called as a witness, my relationship with him in the past would not, in my

view, preclude my making any necessary determinations with regard to his credibility.”

- c. Respondent further stated, on the record, that he felt “perfectly comfortable retaining responsibility for the matter even if Mr. Siracusa were to testify.”
- d. Respondent revealed, for the first time, that he occasionally played bridge with Siracusa until “a few years ago.”
- e. Respondent recused himself on his own motion, citing his “inappropriate reaction” to Rosefielde’s counsel at a previous hearing and his “significant concerns with the manner in which the case ha[d] been handled” as his reasons for recusing himself.

14. The Rosefielde Matter was subsequently transferred to the Honorable William E. Nugent, J.S.C. before whom the case was tried.

15. Following his recusal from the Rosefielde Matter, Respondent appeared in the back of Judge Nugent’s courtroom during the trial of the Rosefielde Matter.

16. Respondent first appeared in the back of Judge Nugent’s courtroom during the trial of the Rosefielde Matter on the afternoon of May 16, 2007.

17. Respondent did not speak to anyone during his appearance in the back of Judge Nugent’s courtroom on May 16, 2007, but remained for approximately one hour and observed a portion of the testimony being offered by Kaye.

18. Respondent appeared in the back of Judge Nugent’s courtroom a second time, the date of which is in dispute, and again remained in the courtroom for approximately one hour during the morning session. On this occasion, at a break in the proceedings, Respondent spoke with Kaye’s counsel.

19. On May 21, 2007, the sole witness in the Rosefielde trial was Bruce Kaye.

20. On May 22, 2007, the sole witness in the Rosefielde trial was Carl Poplar, Esq., the plaintiff’s legal malpractice expert.

21. On October 16, 2008, Respondent appeared before the New Jersey Senate Judiciary Committee and offered testimony, under oath, with regard to his reappointment, with tenure, as a Superior Court Judge (“Reappointment Hearing”).

22. At his Reappointment Hearing, Respondent was questioned by a member of the Senate Judiciary Committee about his failure to recuse himself from the Rosefelde Matter and his appearances in the back of Judge Nugent’s courtroom during the trial of the Rosefelde Matter.

23. With regard to the recusal issue, Respondent testified before the Senate Judiciary Committee as follows:

[W]hen the matter was first presented to me, it was suggested that there was an individual [Siracusa] who was not a party to the case. He was neither a plaintiff nor a defendant, nor was he going to be a witness. His name was going to be used or referred to in the course of the testimony with respect to one or several issues.

I indicated that if he, indeed, had been a party or a witness in the case that I would not hear the case. But because he was neither going to be a witness nor a party, there was no reason at that point that I should not hear the case. And at that point, on that basis, I declined to excuse myself from the case. Later on, for unrelated reasons having to do with matters that made me uncomfortable, on my own motion I excused myself from the case and it was assigned to another judge.

24. When questioned further by a member of the Senate Judiciary Committee about his failure to recuse himself from the Rosefelde Matter, Respondent similarly denied excusing himself from the case due to a conflict of interest he had with Siracusa, stating:

Because the individual in question was never going to be a witness in the case. His name was going to be referred to by some of the witnesses. But his credibility and his interests were never going to be involved in the case. If they had been – I put it on the record. If he were going to

be a witness and I had to evaluate his credibility, or if he were going to be a party and interests that he had were at stake, I should not be in the case. And I said that. But he was not.

25. With regard to his appearances in the back of Judge Nugent's courtroom during the trial of the Rosefelde Matter, Respondent testified before the Senate Judiciary Committee as follows:

The case presented some very interesting questions, at least for me – intellectual questions having to do with the responsibilities of a lawyer and a claim of fraud on behalf of a lawyer, things that, frankly, I was interested in because they're not quite run-of-the-mill.

When the case came up for trial, as it happened, that particular week I was just finishing a jury trial. So when the jury was out deliberating, and I was waiting for the verdict, I had some time. So I made two visits to the courtroom where the case was being tried, and I sat in the back, inconspicuous – I spoke to nobody – watched one of the witnesses testify for a while. Then I got my verdict, so I had to leave.

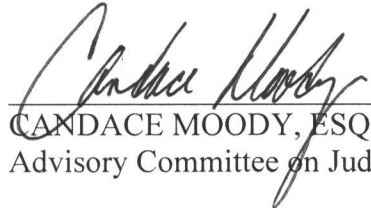
Two or three days later, when the other witness that I wanted to hear – the expert on legal fraud – the testimony I really wanted to hear. When he came in to testify, I had nothing that morning on my schedule. So I went down and spent an hour or so in the back of the courtroom, watching the testimony. That's what I did.


26. Respondent's court calendar for May 16, 2007 -- the date of his first appearance in the back of Judge Nugent's courtroom – indicates that there was no court activity in Respondent's courtroom on that date. Rather, Respondent's court calendar for May 16, 2007 indicates that he attended a "Career Day" at a local elementary school.

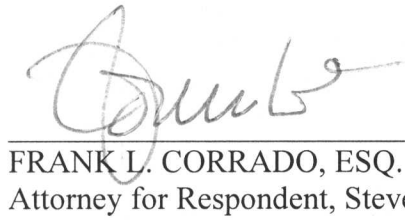
27. Prior to May 16, 2007, Respondent presided over a jury trial that concluded with a jury verdict on May 15, 2007.



28. The expert to whom Respondent made reference in his testimony before the Senate Judiciary Committee testified on May 22, 2007, and on no other date.

  
CANDACE MOODY, ESQ.  
Advisory Committee on Judicial Conduct

DATED: June 15, 2010  


  
FRANK L. CORRADO, ESQ.  
Attorney for Respondent, Steven P. Perskie

DATED: June 14, 2010  
